

MF 96-3

Tax Type: MOTOR FUEL USE TAX  
Issue; Off-Highway Usage Exemption

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

---

---

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	Docket #
v.	)	License #
	)	
TAXPAYERS	)	
	)	Karl W. Betz
	)	Administrative Law Judge
Taxpayers	)	

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES**

ATTORNEY, for TAXPAYER A and TAXPAYER B

**SYNOPSIS**

This case involves TAXPAYER A doing business as TAXPAYER B and TAXPAYER B, (each referred to hereinafter as "taxpayer"), a business that hauled cargo for hire in commercial motor vehicles between November, 1987 and October, 1992. The Taxpayer filed two separate Claims for Credit with the Department for alleged non-highway use of motor fuel through utilization of a power take-off (PTO) mechanism in its trucks. The Department paid the first claim for the period of August, 1987 through June, 1989, and then assigned an auditor to ascertain the validity of the alleged non-highway usage of motor fuel. The auditor determined that part of this claim was not valid and Notice of Tax Liability (NTL) No. XXXXX was issued in the amount of \$8,356.00 (inclusive of tax, penalty and interest). Taxpayer filed a subsequent claim for the period of August, 1991 through October, 1992 and the Department denied this claim by letter dated February 10, 1993. Because taxpayer filed a timely protest to the assessment and the claim denial, a hearing was

scheduled. The hearing on the assessment and on the claim were consolidated because of common issues and parties. (Tr. pp. 4-5).

TAXPAYER A, president of taxpayer, testified at hearing as did CONSULTANT, outside consultant. Also called to testify by taxpayer was auditor Isadore McDuffy.

At issue in this proceeding is if taxpayer is entitled to a refund for special fuel allegedly used for off-road purposes. It is the position of taxpayer that because the PTO mechanisms on its trucks used fuel for a purpose other than locomotion of the vehicle upon the highways, it is entitled to a refund. It is the position of the Department that taxpayer did not submit sufficient proof to establish the amounts of non-highway used fuel for which it applied for refunds on the RMFT-11 Motor Fuel Tax Refund forms. It is also the position of the Department that to allow taxpayer's refunds to stand would be a double credit situation for the portion of the fuel for which taxpayer has already received credit as a purchase of tax-paid special fuel on line 7A of the Motor Fuel Use Tax Returns (IDR-280s) it filed prior to its submission of the RMFT-11 refund forms. (Tr. pp. 37, 39)

After considering the record, I recommend the issues be resolved in favor of the Department.

### **FINDINGS OF FACT**

After reviewing the transcript of record, including all documentary evidence admitted therein, I make the following factual determinations:

1. Taxpayer TAXPAYER A d/b/a TAXPAYER B operated as a sole proprietor during the period of November, 1987 through September, 1989. This entity conducted business operations as a trucking company by hauling limestone, rock, coal, etc. (Tr. p. 9; Dept. Ex. Nos. 1 and 2)
2. Corporate taxpayer TAXPAYER B operated as a trucking company by hauling limestone, rock, coal, etc. during the period of August, 1991 through October, 1992. (Tr. p. 9; Dept. Ex. No. 3)
3. Taxpayer uses several trucks in its business. At times this number has been in excess of twenty. (Tr. p. 9)

4. Each taxpayer filed refund claims on Form RMFT-11 with the Department for Illinois motor fuel tax allegedly used for purposes other than operating vehicles upon the public highways. The timeframes for these refund claims are November, 1987 through September, 1989, and August, 1991 through October, 1992. (Dept. Ex. Nos. 1-3) The Department approved the first claim and then referred it to the Audit Division for verification which resulted in the Department performing an audit upon taxpayer. (Tr. pp. 5-6; Dept. Ex. Nos. 1-2)
5. For the audit period the auditor reduced the allowable amount of taxpayer's claim because taxpayer had not provided sufficient documentary evidence to support its claimed off-road usage of motor fuel (Tr. pp. 27-29, 33, 38; Dept. Ex. Nos. 1 and 2)
6. Auditor McDuffey, for the period of November 1987, through September, 1989 established a tax liability of \$6,247. This was \$661 less than the \$6,908 tax refund amount approved and paid to taxpayer pursuant to its RMFT-11 claim form. The reason for the \$661 decrease is because the November and December, 1987 months were deemed to be outside the statute of limitations for the audit period. (Dept. Ex. No. 2)
7. Pursuant to statutory authority, the auditor did cause to be issued a Correction of Returns or Determination of Motor Fuel Tax Due and this served as the basis for NTL No. XXXXX. (Dept. Ex. No. 1)
8. Taxpayer's claim for refund of \$5,289.64 for the period of August, 1991 through October, 1992 was denied by the Department on February 10, 1993. (Tr. p. 33; Dept. Ex. No. 3)
9. While taxpayer offered general testimony that its limestone spreading operations entail off-road usage of fuel, the taxpayer did not submit any documentary evidence comprised of its books and records to establish what amount of fuel it used for off-road purposes. (Tr. pp. 3, 10-11)

10. The non-highway amounts of time attributable to use of fuel submitted by taxpayer in conjunction with its August, 1991 through October, 1992 claim for refund application are estimates not based upon or supported by documentary evidence showing the time each truck spent loading or unloading in a non-highway operation. (Tr. p. 3; Dept. Ex. No. 3, pp. 2-3, 6-7)
11. Taxpayer filed Motor Fuel Use Tax returns for the periods at issue herein. (Tr. p. 15)

### **CONCLUSIONS OF LAW**

Section 13 of the Motor Fuel Tax Law (35 ILCS 505/13)<sup>1</sup> authorizes a refund when Motor Fuel is lost or used for a purpose other than operating a vehicle upon the public highways. This Section states in pertinent part:

The claim shall state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary and the time when the loss or nontaxable use occurred, and the circumstances of its loss or the specific purpose for which it was used (as the case may be), together with such other information as the Department may reasonably require.

\* \* \*

The Department may make such investigation of the correctness of the facts stated in such claims as it deems necessary.

Section 13 authorizes refunds when Motor Fuel is used for a purpose other than operating a motor vehicle upon the public highways, because the tax is imposed on the privilege of operating motor vehicles upon the public highways. (35 ILCS 505/2). In the context of a Motor Fuel Tax refund claim, the above-cited statutory provision requires a filing party to provide factual information relating to the fuel purchase, along with other information that the Department may reasonably require, and the Department is authorized to investigate the correctness of the information provided in conjunction with such claim. When a business is maintaining that it purchased fuel tax-paid and then used some for an off-highway purpose, the information

---

<sup>1</sup>. The language of this and subsequently cited statutory provisions is the language in effect during the contested timeframes herein.

that should be maintained includes verifiable records that show the number of off-highway miles driven by taxpayer vehicles. These records must be capable of being investigated and audited by the Department. A user of Motor Fuel has the burden of proving that the use to which he put it was for a purpose other than the operation or propelling of a motor vehicle upon the highways, Pascal v. Lyons, 15 Ill.2d 41, 46, (1958).

When a taxpayer has machines or vehicles that it uses off-highway in agricultural or other commercial operations, it must keep records of the number of off-highway trips the vehicles make and the number of miles for each trip, because these factors when multiplied yield the number of off-highway miles which, divided by the miles per gallon, yields the number of gallons of fuel eligible for the off-highway fuel usage credit. Despite taxpayer's testimony about his off-highway usage of fuel, he presented no records at hearing to substantiate this usage.

Motor fuel can also qualify for the off-highway credit when it is utilized in operating a device or motor that itself does not propel the vehicle but rather operates a mechanism for a functional purpose such as a pump or compressor. When the motor fuel for such a use comes from the same fuel tank that dispenses the fuel to the engine that propels the vehicle upon the highways, a taxpayer must maintain records to substantiate the non-highway usage. This is the situation here regarding the alleged off-highway fuel usage that was filed for the operation of the power take-off mechanisms used to supply the power to the hydraulic lift or other devices on the trucks.

Title 86 *Admin. Code* Ch. I, Sec. 500.180, in effect during the two timeframes at issue herein, did not permit the Department to approve a refund for motor fuel tax when part of the motor fuel was used for a taxable purpose and the other part for which refund was claimed was estimated. The regulation further states "Only claims which are supported by positive proof of the exact amount of motor fuel not used for a taxable purpose will be approved." Positive proof required in this type of case would be documentary evidence that establishes the horsepower required to operate the power take-off motors, the amount of fuel used in such operation, and the number of such usages. Then the fuel used multiplied by the number of usages would yield the amount of fuel that could be the subject of a Motor Fuel Tax Refund application, so long as that same fuel had not already been listed on Line 7A and used as gallonage taken as a credit by the same taxpayer on its IDR-280 Motor Fuel Use Tax return.

The Department's Correction of Returns or Determination of Motor Fuel Tax Due for the audit period and its Notice of denial of claim were introduced into evidence without objection by the taxpayer (Tr. p. 7; Dept. Ex. Nos. 1, and 3), and these documents established the *prima facie* case of the Department. Because taxpayer submitted no documentation in the form of books and records to support its contention of off-road usage, I must conclude the *prima facie* case of the Department has not been rebutted. This conclusion is pursuant to evidentiary standards that the Illinois Appellate and Supreme Courts have established for these types of cases. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968); Fillichio v. Department of Revenue, 15 Ill.2d 327 (1959). After introduction of the corrected return, the burden of going forward with the evidence shifts to the taxpayer, who must then introduce competent documentary evidence to show that the Notice of Tax Liability is not correct, and the evidence presented by the taxpayer must include some documentary evidence from its books and records relating to the tax at issue. Consistent with these evidentiary standards is the Appellate Court (Second District) case of Lakeland Construction Co., Inc., v. the Department of Revenue, 62 Ill. App.3d 1036 (2nd Dist. 1978), which involved a Department audit of Motor Fuel Tax liability on a taxpayer who owned 2 gravel pits, and one issue was if any of the fuel was used in non-road vehicles. The taxpayer did not introduce any records from its own books to substantiate the alleged non-road usage of motor fuel and the court held it was proper for the Department to not give the taxpayer any credits for the alleged non-road usage. Lakeland at 1039-1040.

Similarly, in the instant matter, because the taxpayer has not submitted documentary evidence from its own records to show that it is entitled to credit for non-road usage, I cannot find there was any such usage, despite the sincere and credible testimony of Mr. TAXPAYER A.

All that was submitted by the taxpayer was sent with the original claims. For the credit timeframe of November, 1987 through September, 1989, the taxpayer submitted tax-paid invoices, but nothing was submitted to verify the off-highway usage other than a list of its trucks on the reverse of the original claim form. (RMFT-11). For the credit time frame of August, 1991 through October, 1992, taxpayer submitted the claim based upon a 18.18 percentage of operating time, and the claim contained a computation of a 13.95% fuel credit amount. These percentages can only be considered estimates not acceptable under 86 *Admin. Code*

Section 500.180 as taxpayer has submitted no records showing the time each truck spent loading or unloading in a non-highway operation.

There was testimony at the hearing about the mileage/gallongage filing requirements of the IDR-280, and taxpayer's consultant witness referenced two Department ruling letters on the subject. It was also stated by taxpayer's witness that the Motor Fuel Use Tax return (IDR-280) was for nothing other than offsets between States. After reviewing the law on this subject, I cannot agree with this contention of taxpayer's witness and I also note his characterization of the meaning of the 9/10/91 letter is misplaced while the 3/15/91 letter contains a misstatement.

Section 13a.3 of the Motor Fuel Tax Law (35 ILCS 505/13a.3) states in part:

Every motor carrier who operates in Illinois shall, on or before the last day of the month next succeeding any calendar quarter, file with the Department a report, in such form as the Department may by rule or regulation prescribe, setting forth a statement of the number of miles traveled in every jurisdiction and in this State during the previous calendar quarter, the number of gallons and type of fuel consumed on the highways of every jurisdiction and of this State, the number of gallons and type of fuel purchased within this State during said previous calendar quarter, and which may include both gallons of fuel purchased and miles operated that were unavailable for the 2 immediately preceding calendar quarter reports, upon which a tax was paid under this Act, and such other information as the Department may reasonably require. (emphasis added).

For the timeframe at issue herein, a motor carrier was required to file this report when it incurred Special Fuel Use Tax (commonly called Motor Fuel Use Tax) liability under Sections 13a and 13a.1 of the Motor Fuel Tax Law because of its operation of commercial motor vehicles upon the highways of Illinois and other states. The motor carrier filed this report, which is the IDR-280 return, to determine the amount of fuel tax it owes to the State of Illinois. In making this computation of its fuel tax liability on the report, the emphasized portion of the above statutory citation allows the motor carrier a credit for fuel purchased tax-paid within Illinois, and this was placed on line 7A of the returns taxpayer filed during the audit and claim timeframes. (Tr. 15)

The motor carrier cannot take the line 7A credit on the Motor Fuel Use Tax return when the same gallons of fuel have already been the subject of a refund application under Section 13, and this is according to the following language in Section 13a.3 of the Motor Fuel Tax Law:

A motor carrier who purchases special fuel in this State who pays a tax thereon under any section of the Motor Fuel Tax Law other than Sections 13a. 13a.1, 13a.2 and 13a.3. and who

does not apply for a refund under Section 13 (emphasis added) of the Motor Fuel Tax Law, shall receive a gallon for gallon credit against his liability under Sections 13a, 13a.1, 13a.2 and 13a.3 hereof.

This means the Illinois General Assembly has stated its intention to prohibit a motor carrier from receiving a credit on its Motor Fuel Use Tax Return (IDR-280) when it has already applied for a refund for the same fuel under Section 13. In these cases the complementary situation exists, that is, Taxpayer has already filed Motor Fuel Use Tax Returns and received a gallon for gallon credit under Section 13a.3 and it now seeks a refund under Section 13. Because the Legislature has stated its intent to prohibit a credit under Section 13a.3 when the same fuel has been the subject of a refund application under Section 13, the reasonable result in this complementary situation is to deny a taxpayer a Section 13 refund when it has already used the same fuel for a credit under Section 13a.3.

Motor carriers subject to the Motor Fuel Tax reporting provisions of Section 13a.3, are also required to keep records under Section 13a.2. During the audit and claim periods the taxpayer was required to file under Section 13a.3 information including "...the number of gallons and type of fuel consumed on the highways (emphasis added) of every jurisdiction and of this State ...". The motor carrier is also required to keep in its records, pursuant to Section 13a.2, information that includes "... the number of miles traveled and the amount of fuel consumed on the highways (emphasis added) of this State ...". Because the statutory language requires motor carrier taxpayers to keep and report the number of miles traveled, and amount of fuel consumed on the highways, I find the IDR-280 Report should have been completed and filed with no non-highway miles and gallons on it. Because Section 13a imposes the tax liability upon the use of special fuel upon the highways of Illinois, it naturally follows that Section 13a.2's reporting requirements should exclude non-highway gallons. In view of the fact that the statutory requirement is to report the highway miles and gallons, the Motor Fuel Use Tax returns taxpayer filed during the relevant periods should have excluded all non-highway miles and gallons. I therefore agree with the Department's position that any fuel previously taken as a line 7A credit on the IDR-280 would constitute a double credit if the the same fuel were allowed for credit in Taxpayer's RMFT-11 refund applications.

Taxpayer's consultant witness testified about two letter rulings written by Department Staff Attorneys and these were introduced as its Exhibit Nos. 1 and 2. Taxpayer's consultant witness cited letters

dated 9/10/91 and 3/15/91. While the 9/10/91 letter's statements relied upon by taxpayer are correct, that the RMFT-11 form is the appropriate one for filing a claim for off-road usage and that the credit or refund available on the Motor Fuel Use Tax Return is limited to usage of fuel in another state, the letter does not authorize the reporting of non-highway gallons on the IDR-280. Again, the non-highway mileage and fuel gallonage should not be reported on the IDR-280 return form because the main purpose of this return is to establish the amount of Section 13a liability incurred by a motor carrier for highway usage of special fuel.

The reference to the 3/15/91 letter concerns its stating that both highway and non-highway gallons should be included on lines 1 and 2 of the Motor Fuel Tax Return. Unfortunately for the Taxpayer, this advice is in error. When this letter states that both highway and non-highway gallons should be included on lines 1 and 2 of the return, it ignores the statutory language in Section 13a.3 stating that it is " . . . fuel consumed on the highways (emphasis added) of every jurisdiction . . ." that is to be set forth on the return. Also, the reference to including both highway and non-highway gallons on line 1 is clearly in error, because line 1 is for listing all miles traveled in every jurisdiction, and has nothing to do with the inclusion of any gallons.

In summary, for each matter herein, I find the Department's *prima facie* case has not been overcome by the taxpayer.

### **RECOMMENDATION**

Based upon the findings of fact and conclusions of law stated above, I recommend the Department finalize Notice of Tax Liability No. XXXXX in its entirety, and I also recommend that the Department's denial of taxpayer's claim for refund be upheld.

---

Karl W. Betz  
Administrative Law Judge